

JERSEY / JUDGMENT

Murray v Camerons Limited

[2022] JRC 016 (21 January 2022)

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[2022] JRC 16 [New search] [Help] Dispute - post judgment decisions in relation to interest and costs [2022]JRC016 Royal Court (Samedi) 21 January 2022 Before : T. J. Le Cocq, Esq., Bailiff, sitting alone Between Sir Bob Murray CBE Plaintiff And Camerons Limited First Defendant Advocate N. M. C. Santos-Costa for the Plaintiff. Advocate S. M. J. Chiddicks for the Defendant. decision No. 2 - POST JUDGMENT decision the bailiff: 1. On 21 st September 2021, the Court handed down a judgment relating to quantum in the claim between the Plaintiff and the Defendant (Murray v Camerons Limited

[2021] JRC 234). 2. Three post judgment issues remain to be determined. They were: (i) The timing of the payment from the Plaintiff to the Defendant of the amount the Court has found due; (ii) The interest on that amount; and (iii) Costs of and incidental to the proceedings. 3. On 3 rd November 2021, the Court issued a decision on the first element (Murray v Camerons Limited

[2021] JRC 336). This is a decision on the second and third elements. Interest 4. The Defendant argues that it should be entitled to interest on the sum due on a contractual basis that is 5% above the official dealing rate the Bank of England, as set out in the JCT Standard Contract. It is further submitted that that interest should run from 29 th July 2016 to 21 st September 2021 would amount to a sum of £95,562.31 with interest accruing thereafter at a daily rate of £50.83. 5. The Defendant observes that, at paragraph 64 of its Counterclaim, it claimed: "Interest on the sums found due to it under this Counterclaim pursuant to Article 2(2) of the Interest on Debts and Damages (Jersey) Law 1996 at such rate or rates and for such period or periods as the Court thinks fit." 6. The primary submission of the Defendant as I have said, is that it is entitled to contractual interest at a rate of 5% above the official dealing rate of the Bank of England as this is the rate specified in the JCT Standard Contract. The Defendant's alternative position is that it would be entitled to

statutory interest rate which means, pursuant to Practice Direction RC05/09, interest at 2% above the UK's selected retail bank short term money rate from time to time during the period for which interest shall run calculated on a daily basis. 7. The Defendant's contention that the JCT rate applies comes from the Court's finding at paragraph 217 of its judgment of the 8 th September 2020 on liability (Murray v Camerons Limited

[2020] JRC 179) in which it says: ".... In our judgment the contractual arrangement had significantly mutated to the JCT Standard Contract and the Plaintiff and the Defendant had conducted themselves, and were content to do so, in the manner provided for by that JCT Standard Contract" 8. The Plaintiff's position on interest is that it should pay interest on the sum found due by the Court in accordance with the practice direction RC 05/09, to run from 21 st September 2021 until payment is made. The Plaintiff argues that whereas the Court had found that the parties largely governed themselves in accordance with the JCT form of contract it had not found that a contract price had been agreed nor that such a contract had been concluded. Indeed, in the judgment on quantum of 21 st September 2021, (see

[2021] JRC 234), at paragraph 22, the Court said: "As we have stated, the final contract price was never fixed and the various documents to which we have been taken illustrate a process by which the final contract price was being identified but was never in fact finalised. The tendered sum, faced with a changing specification, becomes less meaningful. It does not, therefore, surprise us that changes occurred in the various costings as to time and the specifications moved on and we do not think that it is realistic to apply those parts to the JCT form of contract which works on the assumption that there is a finalised contract sum or indeed finalised plans and drawings. Indeed, at one point, in the questioning between the Plaintiff's counsel and the Defendant's expert it was suggested that the tender price was fixed and no variation was possible. This is not, on our understanding, in accordance with the express wording of the JCT form of contract, but, in any event, in our judgment and as we have said, the price was evolving and was never fixed." 9. The Plaintiff argues that the Court did not and could not reach a conclusion that the JCT form of contract had been fully finalised between the parties. The Plaintiff advances further arguments which I do not repeat to the effect that the Court could not have intended the JCT Standard Contract in its entirety to govern the relationship between the parties. Furthermore, so the Plaintiff observes, the Defendant's pleaded case is consistent with the Plaintiff's alternative position as set out above and with its pleadings to which reference has already been made. 10. The Plaintiff further argues that the Defendant had consistently claimed interest on this alternate basis until April 2021 where for the first time in the Defendant's skeleton argument, interest was sought at the rate now claimed by the Defendant. This was four years after the filing of the answer and after the Defendant had succeeded on liability. 11. The Plaintiff goes on to argue that the date from which interest should be paid should be the date on which the Court made a final determination as to quantum. The Plaintiff points out a delay in the finalisation of the Defendant's claim and that the Defendant was unable to set up a final account which it purportedly issued on 29 th April 2016. 12. The

Court accepts the Plaintiff's argument to the extent that it did not determine that the JCT form of contract applied to all aspects of the relationship between the Plaintiff and Defendant. The Court found that the relationship had mutated towards the JCT form of contract as a result of what the parties in fact did. That does not mean all the terms of the JCT form of contract were incorporated and indeed they could not be so given that the contract price was not finalised. 13. In my judgment the correct rate of interest to apply is that originally claimed by the Defendant in its counterclaim i.e. to be determined by Practice Direction RC05/09. 14. With regard to the date, the Court has found that the Defendant was entitled to a specific sum. The time for the payment of that sum has been extended as a result of the dispute between the Plaintiff and the Defendant. Nonetheless the Court has found that this sum was due at the date of the conclusion of the relationship between the Plaintiff and the Defendant. 15. The Defendant provided its final account on 29 th April 2016, and although ultimately it has been found that the sum due to it was somewhat less than the balance of £509,783.90 claimed nonetheless the Defendant was entitled to be paid the monies due to it within a reasonable period of the final account. 16. The Defendant points out that on 21 August 2020, it invited the Plaintiff to agree that interest would run from 29 th July 2016 being a reasonable period from when the Defendant submitted its final account. I think that this is a reasonable period. 17. Accordingly, the Court orders the payment of interest in accordance with the Defendant's alternative position namely statutory interest at the Court rate being 2% above the UK's selected retail bank short term money rates (base rate) from time to time from 29 July 2016 until the date of payment. Costs 18. The Defendant seeks its costs of and incidental to the proceedings on the basis that it is the clear winner in both the liability and the quantum arguments. The Defendant further argues that the payment of those costs should be on the indemnity basis although no previous cost orders made should be disturbed. 19. The Plaintiff's position is that the Defendant should receive 54% of its reasonable costs of the proceedings to be assessed on the standard basis. 20. The principles upon which the Court will approach a claim of indemnity costs have been referred to in a number of judgments. For these purposes however, it is sufficient to refer to *MacFibhisigh v C I Trustees*

[2016] 1 JLR Note 1 which states: "When considering whether to award costs on an indemnity basis, the question for the Court is whether there was something in the conduct or action by one of the parties or the circumstances of the case that took it out of the norm and justified indemnity costs. It is ultimately a question of what will be fair and reasonable in all the circumstances" 21. It is argued by the Defendant that the Plaintiff has proceeded in an unreasonable, uncompromising, and disproportionate way. It is argued that the Plaintiff had engaged Turner and Townsend to challenge the Defendant's entitlement and threatened expensive litigation should the Defendant not take a substantial discount. The Plaintiff had sought to "reinvent history", by seeking to restrict the Defendant's entitlement through an "artificial and incorrect" reliance upon what had been intended as an initial letter of intent. 22. It is argued that the Plaintiff has continued to act unreasonably in the way that he started proceedings, laid blame and made allegations against the Defendant,

pursued discovery on a disproportionate basis, incurring costs in its dealings with the pleadings, not engaging properly with experts, issuing a claim late in the day and disregarding the Court's instructions in the approach to be taken in the calculation of a final account. 23. It is further argued by the Defendant that the Plaintiff has rejected several offers made to compromise the matter by the Defendant but has not in the event beaten those offers. 24. The Plaintiff for its part argues that the Defendant should not receive 100% of its costs which should in any event be taxed on the standard basis. It is argued that the Plaintiff has changed its position in relation to quantum on a number of occasions and in the quantum judgment achieved significantly less than its original claim. Indeed the sum achieved by the Defendant was 54% of the amount claimed and it is for this reason that the Plaintiff argues that he should only pay 54% of the costs. 25. In addition to the authority set out above, the Plaintiff makes reference to *Hodges v Trenouth-Wood*

- [2021] JRC 179 in which MacRae, Deputy Bailiff said: "It is necessary for a party seeking an order for indemnity costs in its favour to identify something in the conduct of the action of the other party or the circumstances of the case which takes the case out of the norm, recognising that there will nearly always need to be a clear demonstration of a degree of unreasonableness on the part of the other party. It is evidence of unreasonableness which is the hallmark of an award on the indemnity basis." 26. Whilst the Court agrees with that statement and generally speaking to justify an order for indemnity costs unreasonableness would be a feature, it would be, to our mind, significant unreasonableness. Often disputes before the Court ultimately end up in a decision by the Court in which it might be said that the behaviour of the unsuccessful party contained an element of unreasonableness. Indeed, that could apply to the successful party as well. If both parties are behaving entirely reasonably then a number of matters before the Court would not come before it at all. It is not therefore simply unreasonableness as that would be a feature for increasing costs but a material level of unreasonableness would take the matter outside of the norm. 27. I do not think that it is helpful to conduct a detailed analysis of the behaviour of the parties throughout the course of this lengthy litigation. It may very well be that the stance of one party or the other has from time to time been unreasonable but the Court does not need to make any determination in that regard and does not do so. 28. This has the hallmarks of hard fought litigation in which there has ultimately been a winner and a loser. Nothing takes this claim out of normal parameters and accordingly I do not find that an order for indemnity costs is appropriate. 29. Similarly, the Court is not attracted by the Plaintiff's view that because the Defendant has succeeded in gaining 54% of what it claimed then the costs should be reduced to reflect a similar percentage. The assessment of an appropriate costs order is not a simple mathematical calculation which is tied to the amount ultimately recovered. The fact is that the matter first engaged the Court as a result of a claim brought by the Plaintiff against the Defendant which was not vindicated and although the Defendant did not achieve the full amount that it initially claimed in the counterclaim, it has very largely succeeded in both the liability and the quantum

arguments. Arguably, in the judgment of the Court, the quantum argument did not need to take place and it is regrettable that the parties could not have achieved an accommodation between them to avoid the necessity of a second lengthy hearing. 30. Be that as it may, however, in my view the Defendant has prevailed and we order that the Plaintiff pay the Defendant's costs of and incidental to the proceedings on a standard basis to be taxed if not agreed. We confirm that this order does not overturn any previous orders the Court has made regarding the costs in these proceedings. Authorities *Murray v Camerons Limited*

[2021] JRC 234 . *Murray v Camerons Limited*

[2021] JRC 336 Practice Direction RC05/09. *Murray v Camerons Limited*

[2020] JRC 179 . *MacFirbhisigh v C I Trustees*

[2016] 1 JLR Note 1 . *Hodges v Trenouth-Wood*

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